

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID SANDOVAL, RAUL CORIA,
and all other similarly
situated persons,

NO. CV-07-3076-EFS

Plaintiffs,

V.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

RIZZUTI FARMS, LTD., and JOHN
R. RIZZUTI and JANE DOE
RIZZUTI, a marital community.

Defendants

Before the Court, without oral argument, is Plaintiffs' Motion for Class Certification. (Ct. Rec. 23.) Plaintiffs seek to certify approximately 200 hundred low-wage, limited English migrant workers that Defendants allegedly injured through illegal employment and housing practices. After reviewing the submitted material¹ and relevant authority, the Court is fully informed and grants Plaintiffs' motion. The reasons for the Court's Order are set forth below.

¹Defendants did not file a response - a response was due on June 2, 2008.

I. Background

Defendant John R. Rizzuti works for Defendant Rizzuti Farms, Ltd., an agricultural business operating asparagus and cherry farms near Mattawa, Washington. Plaintiffs - and the proposed class members - worked for Defendants as migrant farm hands during the 2005, 2006, and 2007 asparagus or cherry harvests.

Defendants orally agreed to pay Plaintiffs piece rates plus per-pound bonuses if they remained employed with Defendants through the harvest season. Plaintiffs allegedly received neither the promised piece rates nor the end-of-season bonuses.

When the promised wage increase never materialized, approximately 200 workers - including Plaintiffs - confronted Defendants on May 19, 2006. Defendants allegedly refused to honor the promised wages and threatened to terminate the workers and remove them from their migrant worker housing if they did not immediately disband. For support, Defendants called the Grant County Sheriff's Department. Several deputies responded and ordered the workers to either disband or leave the farm. Some workers, including Plaintiff David Sandoval, left the farm; other workers, including Plaintiff Raul Coria, returned to work.

In addition to allegedly violating oral agreements, Plaintiffs insist Defendants failed to pay them lawful minimum wages and housed them in overcrowded, uncertified, on-farm housing.

On August 31, 2007, Plaintiffs filed a Class Action Complaint for Damages and Declaratory and Injunctive Relief based on Defendants' alleged conduct. (Ct. Rec. 1.) In their class certification motion, Plaintiffs move to certify the following general class:

1 All migrant and seasonal farm workers employed by Defendant
 2 Rizzuti Farms, Ltd. or Defendant John R. Rizzuti ("Defendant
 3 Employers") during the 2005, 2006, or 2007 asparagus or cherry
 4 harvests.

5 (Ct. Rec. 23 at 2.) The general class is referred to as the
 6 "Agricultural class."

7 Plaintiffs also move to certify two (2) subclasses:
 8

- 9 (1) All workers who resided in the migrant worker housing
 10 provided by Defendant Employers during the 2005, 2006, or
 11 2007 asparagus or cherry harvests; and
- 12 (2) All workers who were threatened or intimidated by
 13 Defendant Employers or whose employment with Defendant
 14 Employers was temporarily or permanently terminated on
 15 May 19, 2006.

16 *Id.* at 2-3. The first subclass is referred to as the "Housing subclass";
 17 the second subclass is referred to as the "Retaliation subclass."

18 II. Discussion

19 A. Class Certification Hearing

20 While evidentiary hearings on class certification are common, they
 21 are not required if there is enough information from the pleadings and
 22 submitted material for the Court to effectively decide the certification
 23 issue. See *Gen. Tel. Co. of the Sw v. Falcon*, 457 U.S. 147, 160 (1982).
 24 A certification hearing is unnecessary here for two (2) reasons: First,
 25 Plaintiffs' motion is unopposed. Local Rule 7.1(h)(5) notes that a
 26 failure to respond may be viewed as consent to entry of an Order adverse
 to the defaulting party. And second, Plaintiffs' pleadings are thorough
 and accompanied by nine (9) declarations, providing the Court with
 sufficient factual information to make an informed ruling on class
 certification. Accordingly, the Court finds a hearing is unnecessary.

See LR 7.1(h)(3).

1 **B. Class Certification Standard**

2 Class certification under Federal Rule of Civil Procedure 23 is a
3 two-step process. First, the party seeking certification must satisfy
4 Rule 23(a)'s four (4) prerequisites, which are:

5 (1) Numerosity (a class so numerous that joinder of all members is
6 impracticable);
7 (2) Commonality (there are questions of law or fact common to the
8 class);
9 (3) Typicality (the claims or defenses of the representative party
10 are typical of the claims or defenses of the class); and
11 (4) Adequacy (the representative parties will fairly and adequately
12 protect the class' interests).

13 FED. R. CIV. P. 23(a). Once these requirements are met, the party seeking
14 certification must next demonstrate that the lawsuit qualifies for class
15 action status under one of Rule 23(b)'s three (3) criteria. See *Zinser*
16 *v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1186 (9th Cir. 2001),
17 amended and superceded on denial of rehearing by *Zinser v. Accufix*
18 *Research Inst., Inc.*, 253 F.3d 1266 (9th Cir. 2001) (noting that
19 plaintiff bears the burden of demonstrating that he met each of
20 Rule 23(a)'s four (4) requirements and at least one of Rule 23(b)'s
21 requirements).

22 Rule 23(b) requires the party seeking certification to establish
23 that either: (1) separate actions would create a risk of inconsistent
24 adjudications; (2) the party opposing the class has acted or refused to
25 act on grounds that apply generally to the class; or (3) common questions
26 of law or fact predominate and class resolution is superior to other
available methods.

1 The party seeking certification bears the burden of demonstrating
2 that certification is appropriate. *Hawkins v. Compart-Cassani*, 251 F.3d
3 1230, 1238 (9th Cir. 2001). District courts, while maintaining great
4 discretion in certifying a class action, must nevertheless rigorously
5 analyze whether the proposed class action meets Rule 23's requirements.
6 See *Falcon*, 457 U.S. at 161. In performing this analysis, courts accept
7 the complaint's allegations as true so long as the allegations are
8 sufficiently specific to permit an informed decision on whether Rule 23's
9 requirements are satisfied. *Blackie v. Barrack*, 524 F.2d 891, 901 n.17
10 (9th Cir. 1975). The class members' substantive claims are generally
11 irrelevant to this inquiry. *Moore v. Hughes Helicopters, Inc.*, 708 F.2d
12 475, 480 (9th Cir. 1983).

13 **C. Certainty**

14 Apart from Rule 23(a)'s explicit prerequisites, an implied
15 prerequisite for certification is that the class is sufficiently
16 definite. *DeBremaeker v. Short*, 433 F.2d 733 (5th Cir. 1970); see also
17 *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 679 (S.D. Cal. 1999);
18 *Whiteway v. FedEx Kinko's Office & Print Servs.*, 2006 U.S. Dist. Lexis
19 69193 at *3 (N.D. Cal. 2006). A sufficiently definite class exists if
20 its class members are ascertainable and clearly identifiable.
21 *DeBremaeker*, 433 F.2d at 734-35.

22 Here, Plaintiffs can identify class membership by examining the
23 employee payroll and other records maintained by Defendants. This is a
24 reasonable, objective method for ascertaining those individuals employed
25 by Defendants during the 2005, 2006, or 2007 asparagus or cherry
26 harvests. Accordingly, Plaintiffs satisfy the implicit certainty
prerequisite for class certification.

1 **D. Rule 23(a)'s Requirements**

2 1. Numerosity

3 ____ The numerosity prerequisite is met if "the class is so numerous that
4 joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1).
5 "Impracticable" does not mean "impossible," and a party seeking
6 certification need only establish that joining all class members is
7 difficult or inconvenient. *Harris v. Palm Springs Alpine Estates, Inc.*,
8 329 F.2d 909, 913-14 (9th Cir. 1964). As a general rule, classes
9 exceeding forty-one (41) individuals satisfy the numerosity requirement.

10 See 5 JAMES WM. MOORE ET. AL., MOORE'S FEDERAL PRACTICE § 23.22[1][b] (3d. ed.
11 2004).

12 ____ Here, Plaintiffs' proposed class and subclasses satisfy
13 Rule 23(a)(1)'s numerosity prerequisite. The Agricultural class consists
14 of approximately 200 migrant workers; the Housing sub-class consists of
15 approximately eighty (80) migrant workers; and the Retaliation sub-class
16 consists of approximately 200 migrant workers. Joining up to 200 limited
17 English speaking migrant workers, while not impossible, is impracticable.
18 Numerosity exists.

19 2. Commonality

20 ____ The commonality prerequisite is met if there are questions of law
21 or fact common to the class as a whole. FED. R. CIV. P. 23(a)(2). This
22 requirement is liberally construed. *Rodriguez v. Carlson*, 166 F.R.D.
23 465, 472 (E.D. Wash. 1996) (McDonald, J.) (citation omitted). The
24 existence of shared legal issues with diverging factual predicates is
25 sufficient to satisfy Rule 23(a)(2). *Hanlon v. Chrysler Corp.*, 150 F.3d
26 1011, 1019 (9th Cir. 1998).

1 The Agricultural class shares the following legal and factual
2 questions:

- 3 (i) whether Defendants failed to provide written terms
4 and conditions of employment to plaintiff class
5 members following plaintiffs' request;
- 6 (ii) whether Defendants failed to pay plaintiff class
7 members agreed wages;
- 8 (iii) whether Defendants failed to pay plaintiff class
9 members Washington's minimum wage;
- 10 (iv) whether Defendants failed to provide plaintiff class
11 members with accurate itemized pay statements; and
- 12 (v) whether Defendants breached plaintiff class members'
13 employment contracts.

14 The Housing subclass shares the following legal and factual
15 questions:

- 16 (i) whether Defendants' migrant worker housing failed to
17 comply with federal and state safety and health
18 standards;
- 19 (ii) whether Defendants unlawfully permitted migrant
20 workers to reside in housing not certified by the
21 Washington State Department of Health;
- 22 (iii) whether Defendants failed to post Washington State
23 Department of Health certifications before opening
24 the migrant worker housing to occupancy; and
- 25 (iv) whether Defendants failed to post sufficient
26 statements concerning occupancy terms and conditions
 at the migrant worker housing site.

The Retaliation subclass shares the following legal and factual questions:

- (i) whether Defendants discriminated against Retaliation subclass members because they exercised their rights under the Migrant and Seasonal Agricultural Protection Act (AWPA), 29 U.S.C. §§ 1801 et. seq.;
- (ii) whether Defendants interfered with, restrained, or coerced Retaliation subclass members from engaging in concerted activities for the purposes of mutual aid or protection;
- (iii) whether Defendants discharged Retaliation subclass members because they participated in concerted activities for purposes of mutual aid and protection; and
- (iv) whether Defendants terminated Retaliation subclass members in violation of Washington law.

As illustrated, there are sufficiently common legal and factual issues among the proposed class and subclasses. Commonality exists. See, e.g., *Rodriguez*, 166 F.R.D. at 472 (certifying a migrant farm worker class alleging, *inter alia*, inadequate housing and failure to provide proper AWPA disclosures); *Leyva v. Buley*, 125 F.R.D. 512, 513 (E.D. Wash 1989) (Quackenbush, J.) (certifying a migrant farm worker class alleging, *inter alia*, minimum wage violations).

3. Typicality

The typicality prerequisite is met if the representative parties' claims or defenses typify the class' claims or defenses. FED. R. CIV. P. 23(a)(3). "[R]epresentative claims are 'typical' if they are reasonably

1 coextensive with those of absent class members; they need not be
2 substantially identical." *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1184
3 (9th Cir. 2007) (citation omitted). Because the typicality requirement
4 also focuses on the similarity between the lead plaintiffs' legal
5 theories and those that they purport to represent, Rule 23(a)'s
6 commonality and typicality prerequisites tend to merge. *Falcon*, 457 U.S.
7 at 158 n.13.

8 Here, Plaintiffs' proposed class and subclasses satisfy
9 Rule 23(a) (3)'s typicality prerequisite. Both Plaintiffs Raul Coria and
10 David Sandoval were migrant workers employed by Defendants during the
11 2005, 2006, or 2007 asparagus or cherry harvests. Plaintiff Coria's
12 claims are reasonably coextensive with absent Housing subclass members
13 because he resided in Defendants' alleged sub-standard housing; Plaintiff
14 Sandoval's claims are reasonably coextensive with absent Retaliation
15 subclass members because Defendants terminated him after he allegedly,
16 along with others, attempted to exercise his legal rights; and both
17 Plaintiffs' claims are reasonably coextensive with the Agricultural class
18 because they, along with approximately 200 other migrant farm workers,
19 claim injury from Defendants' alleged wage violations. There is an
20 extensive interrelationship between the representative Plaintiffs' claims
21 and the roughly 200 class members. Typicality exists.

22 4. Adequacy

23 _____The adequacy prerequisite is met if the representative parties will
24 fairly and adequately protect the class' interests. FED. R. CIV. P.
25 23(a) (4). This prerequisite requires that: (1) the proposed
26 representative Plaintiffs do not have conflicts of interest with the

1 proposed class, and (2) Plaintiffs are represented by qualified and
2 competent counsel. *Dukes*, 509 F.3d at 1185.

3 Here, Plaintiffs' proposed class and subclasses satisfy
4 Rule 23(a)(4)'s adequacy prerequisite. There are no apparent conflicts
5 of interest. In addition, the Court finds Plaintiffs are represented by
6 qualified and competent counsel. Michael C. Subit, one of Plaintiffs'
7 attorneys, has: 1) over fifteen (15) years in employment law experience;
8 2) successfully represented plaintiffs in several class actions suits;
9 3) spoken at several Continuing Legal Education seminars on class actions
10 and wage and hour law; and 4) been listed Washington Law & Politics as
11 a "Super Lawyer" for the last eight (8) years. Sean M. Phelan, one of
12 Plaintiffs' attorneys, is fluent in Spanish and has over ten (10) years
13 experience in employment law. Daniel G. Ford, one of Plaintiffs'
14 attorneys, is fluent in Spanish, has over twenty-eight years experience
15 in employment law, and has successfully represented parties in several
16 class action suits. And both law firms - Columbia Legal Services and
17 Frank Freed Subit & Thomas LLP - have dedicated considerable resources
18 thus far and are prepared to invest the necessary resources to adequately
19 represent the class going forward. The Court is persuaded that
20 Plaintiffs' counsel will prosecute this action vigorously on the class'
21 behalf.

22 **E. Rule 23(b)'s Requirements**

23 As stated, in addition to satisfying Rule 23(a)'s prerequisites, a
24 party seeking certification must also demonstrate that the lawsuit
25 qualifies for class action status under one of Rule 23(b)'s three (3)
26 criteria. *Zinser*, 253 F.3d at 1186. Plaintiffs argue certification is
warranted under Rule 23(b)(3), which permits certification when common

1 questions of law or fact predominate and class resolution is superior to
2 other available methods.

3 1. Common Questions Predominate

4 The first requirement for seeking class action status under
5 Rule 23(b)(3) is that common issues predominate. The goal is to assess
6 whether the "proposed classes are sufficiently cohesive to warrant
7 adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521
8 U.S. 591 (1997) (citation omitted). "Because no precise test can
9 determine whether common issues predominate, the Court must pragmatically
10 assess the entire action and the issues involved." *Romero v. Producers*
11 *Dairy Foods, Inc.*, 235 F.R.D. 474, 489 (E.D. Cal. 2006).

12 Here, common factual questions and potential legal remedies dominate
13 this action. Each of the nearly 200 hundred low-wage, limited English
14 migrant workers share common legal and factual questions regarding
15 Defendants' alleged wage violations under the AWPA, Washington's Minimum
16 Wage Act, RCW 49.46, and other various wage laws. They also share common
17 legal and factual questions regarding Defendants' alleged retaliatory
18 behavior. And finally, approximately 80 migrant workers share common
19 legal and factual questions regarding alleged sub-standard living
20 conditions and other housing violations. True, individual issues may
21 arise. But each class members' claims need not be identical - the key
22 is whether common issues predominate. See *Rodriguez*, 166 F.R.D. at 479
23 (finding Rule 23(b)(3) is satisfied because common issues predominated
24 among migrant workers alleging AWPA violations). There is no question
25 that subtle differences between the class members - such as the hour
26 amounts each class member worked - are minor and overshadowed by the

1 shared issues regarding alleged employment and housing violations.
2 Accordingly, common questions predominate.

3 2. Superiority

4 The second requirement for seeking class action status under
5 Rule 23(b)(3) is that class resolution is superior to other available
6 methods. The four (4) factors affecting superiority are:

7 (A) the class members' interests in individually controlling the
8 prosecution or defense of separate actions;

9 (B) the extent and nature of any litigation concerning the
10 controversy already begun by or against class members;

11 (C) the desirability or undesirability of concentrating the
12 litigation of the claims in the particular forum; and

13 (D) the likely difficulties in managing a class action.

14 *Id.* With respect to the first factor, it is highly likely that the
15 individual plaintiffs would not pursue this litigation absent class
16 certification given "their lack of English, their presumably limited
17 understanding of the legal system, the fact that few live permanently
18 within the Eastern District of Washington, and their generally indigent
19 status" *Rodriguez*, 166 F.R.D. at 480 (citing *Leyva*, 125 F.R.D.
20 at 512). With respect to the second factor, the named Plaintiffs have
21 already invested substantial resources in the present litigation. With
22 respect to the third factor, the Eastern District of Washington is an
23 appropriate forum because Defendants' alleged conduct occurred in the
24 Eastern District, Defendants reside in the Eastern District, and nearly
25 all of the 200 migrant farm workers return to the Eastern District for
26 each growing season. And with respect to the fourth factor, not only are
Plaintiffs represented by experienced class-action litigators, but also

1 class certification promotes efficiency, cuts costs, and prevents
2 confusion over possible differing outcomes. Considering these factors,
3 certification is appropriate.

4 **F. Appointment of Counsel**

5 Considering the substantial experience and willingness to commit the
6 necessary resources to prosecute this action, the Court finds appointing
7 Columbia Legal Services and Frank Freed Subit & Thomas as class co-
8 counsel is appropriate.

9 **G. Subclasses**

10 Rule 23(c)(5) enables district courts to break a class into
11 subclasses "[w]hen appropriate" Each subclass is treated as an
12 individual class, and must independent meet Rule 23's requirements. *Id.*
13 The Court finds that it is appropriate to create two subclasses - one for
14 workers who resided in migrant worker housing during the relevant times,
15 the other for workers who were threatened or terminated by Defendants on
16 May 19, 2006. As detailed above, both subclasses are sufficiently
17 definite and satisfy Rule 23's prerequisites.

18 **III. Conclusion**

19 Accordingly, **IT IS HEREBY ORDERED:**

20 1. Plaintiffs' Motion for Class Certification (**Ct. Rec. 23**) is
21 **GRANTED.**

22 2. The Court certifies the following general class in this matter:

23 All migrant and seasonal farm workers employed by Defendant
24 Rizzuti Farms, Ltd. or Defendant John R. Rizzuti ("Defendant
Employers") during the 2005, 2006, or 2007 asparagus or cherry
harvests.

25 3. The Court certifies the following subclasses in this matter:

- 1 (1) All workers who resided in the migrant worker housing
2 provided by Defendant Employers during the 2005, 2006, or
2007 asparagus or cherry harvests; and
- 3 (2) All workers who were threatened or intimidated by
4 Defendant Employers or whose employment with Defendant
Employers was temporarily or permanently terminated on
May 19, 2006.

5 **IT IS SO ORDERED.** The District Court Executive is directed to enter
6 this Order and distribute copies to counsel and Defendants at the
7 following address: Rizzuti Farms, Ltd. 36 South 1st Ave., Othello, WA
8 99344.

9 **DATED** this 6th day of September 2008.

11 S/ Edward F. Shea
12 EDWARD F. SHEA
13 United States District Judge

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